O/Merchandise Marks/51

19 51 **File No.** 29/51

LEGAL DEPT

G **BRANCH**

Subject:—

Opinions on the Indian

Merchandise Marks Act

O/Merchandise Marks/51

29/51

C O N T E N T S.-

Legal Department File No. O. Merchandise Marks/51

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5 Copies.

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Section 2 of the Khaddar (Name Protecton) Act, 1934 which has been brought into force in the State of Bombay on 25th March 1938 provides that the words 'Khaddar ' or 'Khadi' whether in English or in any Indian Vernacular Lanugage, when applied to any woven material shall be deemed to be a trade description within the meaning of the Indian Merchandise Marks Acts, 1889 indicating that such material is cloth woven on handlooms in India from cotton yarn handspun in India. In this case the words'Khaddar(or'Khadi' were not found printed on any cloth or no label containing those words was attached to any such cloth and therefore no breach of section 2 of the said Act can be said to have been committed. Merely becuase the words'Shuddha Khadi' ar are displayed on the board of the shop as part of the firm's name, it cannot be said that false tradd descrpption has been applied to all the cloth found in the shop. No action can thepreforo be taken against these Bhandars Under either the Khaddar(Name Protection) Act or the Indian Marchandise Marks Act.

If the Department is keen on taking action against these Bhandars who sell spurious Khadi as Shuddha Khadi, then the only course would be to send a bogus customer with a panch withness, who should ask for Shuddha Khadi and purchase it and if on examination it turns out to be spufious, a prosecution for cheating could be lauchad only if the fact that he asked for Shuddha Khadi and paid price for such Khadi only is proved.

The provisions of Merchandise Marks Act which make it an offence to sell goods to which false trade descripption is applied, do not apply where the descrption is entirely oral(Coppen Vs. Moore(No.1)(1898)2.Q.B. 300, Langley Vs.Bombay Tea Co,(1900)2Q.B. 460, 45 Digest 241).

Sd/- 11-2-
Additional Secretary to Government.

M.R.D.
26-7-56
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U.R.toP.T.C.,No.G-62 dated the 12th February 1951.

be feasible.

As regards the charge under section 420 Indian Penal Code it will be seen that for an offence of cheating, dishonest or fradulent intention will have to be proved. In this case though wrong descrpption has been applied, there is hardly any evidence to prove dishonesty. The Mills have declared the goods as cotton cloth waste chindhis which they do not deny and the whole correspondence between the parties is open. Dishonesty can be proved, only if the oral talk on telephone between the agent of the Sale All Agencies and the Mills could be provedx but it seems difficult to prov e it in the absence of any other evidence to substantiate the Agent's say. As regards section 7 of the Indian Merchandise Marks Act it must first be proved that the goods sold has a false trade description applied to them. As to this there is considerable room for doubt whether the wrong description applied by the Mills amounted to a " false trade description", that is to say a trade description which is untrue in a material repect as regards the goods to which it is applied. Assuming the prosecution succeeds in proving this, the Mills can still get out of section 7 by showing that having taken all reasonable precautions against committing an offence under section 7 they had at the time of the alleged offence no reason to suspect the genuiness of the trade description, or in other words no guilty knowledgex This they would be in a position to show having regard to the nature of the material, which is not easy to classify or describe with scientific exactness, and having regard to the openness of the transaction. There is therefore very little chance of a prosecution under section 420 Indian Penal Code or section 7 of the Indian Merchandise Marks Act succeeding.

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Additional Secretary to Government.

U.R.to S.T.C., No.G-280, dated the 13th July 1951.

M.R.D.
26-7-5[illegible]

&Legal Department

The view expressed by the Police Prosecutor Shri Dhole that the facts of this case do not fall under the provisions of the Indian Merchandise Marks Act,1889 does not appear to be correct. The Swastik Dyeing and Printing Works may also be prosecuted under section 8 of the said Act and as the false marks were made at the instance of Gopal Stores, the Stores may be prosecuted for abetment. The Stores may also be prosecuted under section 7 of the Indian Merchandise Marks Act for being in possession for sale of goods to which a false trade description(viz. making the goods powerloom when they are in fact mill made/ is applied.

Sd/-

Additional Secretary to Government.

M.R.D.
26-7-56
C.4

U.R. to C.T.C. No. G- 458,dated the 25th September 1951.

The State Textile Controller has forwarded the papers for advice on the following points:-

i) whether the view of the Deputy Commissioner of Police that prosecution under clause 12(1)of the Cotton Cloth and Yarn(Control) Order, 1945, is not possible is correct, and if so,

ii)whether the Mills should be prosecuted under section 420 Indian Penal Code and section 7 of the Indian Merchandise Marks Act.

The prices of yarn were controlled underm Textile Commissioner's Notification No. 34 Tex. A(15) 2/48 dated the 31st December 1943 and the Schedules thereto show the 31st December 1943 and the Schedules thereto show the kinds of waste yarn that were controlled. This notification was further amended by Textile Commissioner's Notification No.T.C. (2)118/46dated 5th April 1946 under which another Schedule controlling prices of Indian Waste Yarn was appended to the original notification. The original notification dated 31st December 1943 was superseded by the Textile Commissioner's Notification No. 80/1-Tex.1/48 dated 28th February 1949. That means that at the relevant date i.e. in 1947 the notification dated 31st December 1943 was in force. The sample of the waste yarn is with the Police. It will not be possible for this office to say under what description this sample would fall. The State Texitile Controller's office may therefore write to the Textile Commissioner by sending a sample and asking them whether it falls under any of the qualities of waste yarn controlled under the said notification- The Police have made oral enquires but instead of depending on such oral enquirems it would be advisable to write to the Texitle Commissioner inthe matter. If the waste yarn sold in this case does not fall under the controlled varieties, no prosecution under clause 12(1) of the Cotton Cloth and Yarn(Control) Orderm, 1945 would